



CALIFORNIA LANDLORD-TENANT RIGHTS, OBLIGATIONS, AND REMEDIES

PRESENTED BY:

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Background: Procopio

- 170+ attorneys.
- Full-service firm: 40+ practice areas.
- Offices in San Diego, Silicon Valley, Las Vegas and Phoenix.
- Ranked 188 in AmLaw 200.
- Rated a Top Ten AmLaw 200 law firm for diversity by *American Lawyer* magazine and a Best Firm for Minority Attorneys by *Law360*.

Background: Michael Kiesling, Esq.

- Commercial real estate and business litigator.
- 15 years of practice in California.
- Began career at Sempra Energy (parent company of SDG&E).

Background: Jeff Stoke, Esq.

- Commercial real estate transactional attorney.
- 30+ years of practice in California.
- Chair of Procopio's Real Estate Practice Group.
- Extensive leasing experience; including cell sites.
- Expertise in the following matters:
 - Landlord delivery of possession;
 - Construction of tenant improvements;
 - Rent commencement triggers;
 - Easements and license rights;
 - Tenant's access to land/buildings; and
 - Landlord's access to inspect premises.

Background: Bill Eigner, Esq.

- Recognized as an award-winning transactional law attorney in San Diego and California for more than 10 years in a row.
- Years of experience in contractual and political issues involving telecommunications companies.
- Former Land Use Chairman of La Jolla Town Council with background in coastal land use issues.
- Years of experience in advising telecom companies and others regarding governmental relations.

OVERVIEW OF PRESENTATION TOPICS

- **Common Disputes**
 - Site Access
 - Landlord Wrongful Termination
 - Others?
- **Premises Liability**
- **Liquidated Damages in Commercial Leases**

MOST COMMON LANDLORD-TENANT DISPUTES

Most Common Landlord-Tenant Disputes

- Site access
- Two issues:
 - Initial possession
 - 24-hour access to facilities

- **INITIAL POSSESSION**

Initial Possession

- *What is required of a landlord?*
 - Landlord must deliver possession of the premises on the commencement date.

Initial Possession

- *In what condition?*
 - In the commercial context, any condition unless the lease provides otherwise. (*Davis v. Stewart* (1944) 67 Cal.App.2d 415, 418; *Strecker v. Barnard* (1952) 109 Cal.App.2d 149, 152.)

Initial Possession

- *What if the landlord fails to deliver initial possession?*
 - The tenant has a right to abandon the tenancy and sue for damages (and no liability for rent). (*Cunningham v. Universal Underwriters* (2002) 98 Cal.App.4th 1141, 1156.)
 - However, unless otherwise provided in the lease, reasonable delays may not give rise to a right of termination.

Initial Possession

- *What is the measure of damages for failure to deliver possession?*
 - The difference between the agreed rent and the rental value of the premises during the term of the lease. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884.)

Initial Possession

- *What about mandatory injunctive relief (e.g., specific performance)?*
 - There is no California law expressly authorizing a mandatory injunction should the landlord fail to deliver possession.
 - However, in theory a tenant could pursue an injunction on a specific performance theory – e.g., real estate is unique, and damages are not an adequate remedy for breach. (Civ. Code § 3387; *Remmers v. Ciciliot* (1943) 59 Cal.App.2d 113, 119.)

- **24-HOUR ACCESS TO FACILITIES**

24-Hour Access to Facilities

- Right of access 24 hours a day, 7 days a week?

24-Hour Access to Facilities

- A landlord's *unreasonable* interference with that right probably constitutes a breach of the lease and of the implied covenant of quiet enjoyment.

24-Hour Access to Facilities

- Implied in every lease, including commercial leases, is a covenant of “quiet enjoyment.”
 - This means the landlord cannot interfere with the tenant’s possession or beneficial enjoyment of the premises. (Civ. Code § 1927; *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1299-1300.)

24-Hour Access to Facilities

- However, minor inconveniences are not actionable breaches of the implied covenant.
 - The landlord's acts or omissions must be substantial – e.g., rendering the premises unfit for the purposes contemplated by the lease. (*Kulawitz v. Pacific Woodenware & Paper Co.* (1944) 25 Cal.2d 664, 668.)
 - Unwarranted interference with any integral part of the tenant's business may be actionable.

24-Hour Access to Facilities

- A breach of the implied covenant does not relieve the tenant's obligation to pay rent if still in possession. (*Petroleum Collections Inc. v. Swords* (1975) 48 Cal.App.3d 841, 847.)
- Indeed, the tenant may remain in possession and sue the landlord for breach of contract. (*Lee v. Placer Title Co.* (1994) 28 Cal.App.4th 503, 513-514.)

24-Hour Access to Facilities

- *Is injunctive relief available for landlord interference with access?*
 - Yes, if injunctive relief is not barred by the lease.
 - A tenant may remain in possession and seek injunctive relief against further interference with quiet enjoyment. (*Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 590.)
- In a commercial lease, the parties can limit the tenant's remedies (damages or injunction) for breach of the implied covenant. (*Lee v. Placer Title Co.* (1994) 28 Cal.App.4th 503, 512-513.)

24-Hour Access to Facilities

- *What damages are available?*
 - The tenant is entitled to contract damages under Civil Code section 3300 – an amount that will compensate for all detriment proximately caused by the landlord’s breach. (*Nativi v. Deutsche Bank Nat’l Trust Co.* (2014) 223 Cal.App.4th 261, 293.)

- **LANDLORD WRONGFUL TERMINATION**

Landlord Wrongful Termination

- Where a landlord acts to terminate in “bad faith,” it is a breach of lease and of the implied covenant of quiet enjoyment. (*Guntert v. City of Stockton* (1976) 55 Cal.App.3d 131, 139.)

- **PREMISES LIABILITY**

Premises Liability

- What is the governing standard?
 - Ordinary care.

Premises Liability

- A tenant, as occupier/possessor, has a duty of ordinary care to keep the premises reasonably safe and give warning of latent/concealed perils. (Civ. Code § 1714(a); *Brown v. San Francisco Ball Club, Inc.* (1950) 99 Cal.App.2d 484, 486.)

Premises Liability

- A party who exercises possession or control over a sidewalk has a duty to warn or protect pedestrians and others who foreseeably may be in the area from dangerous conditions on the sidewalk. (*Alpert v. Villa Romano Homeowners Ass'n* (2000) 81 Cal.App.4th 1320, 1335-1337.)

Premises Liability

- But a tenant is not an insurer of the safety of the property.
- Also, the duty to maintain sidewalks does not require they be maintained in perfect condition. Landowners are not liable for injury caused by minor, trivial or insignificant defects.
(*Whiting v. City of National City* (1937) 9 Cal.2d 163, 165.)

Premises Liability

- If a dangerous condition is so obvious that others could reasonably be expected to see it, the condition itself serves as a warning and there is ordinarily no further duty to warn. (*Krongos v. Pacific Gas & Elec. Co.* (1992) 7 Cal.App.4th 387, 393.)

Premises Liability

- But, though obviousness may negate the duty to warn, there may still be a duty to remedy the condition if it is foreseeable that injury might occur despite obviousness. (*Martinez v. Chippewa Enterprises, Inc.* (2004) 121 Cal.App.4th 1179, 1184-1185.)

Premises Liability

- *Liability to Trespassers?*
 - Possibly. If a tenant knows or should have known of prior acts of trespass involving a dangerous condition under their control, it could incur negligence liability.

Premises Liability

- *Mark v. Pacific Gas & Elec. Co.* (1972) 7 Cal.3d 170, 179: trespasser electrocuted while unscrewing light bulb from defective streetlamp outside his apartment: utility company had prior notice of similar trespasses and thus its wrongful death negligence liability should have gone to the jury.

- **LIQUIDATED DAMAGES IN COMMERCIAL LEASES**

Liquidated Damages in Commercial Leases

- In a commercial lease, a liquidated damages provision is binding unless it can be shown to be unreasonable under the circumstances at the time the lease was entered. (Civ. Code § 1671; *Ridgley v. Topa Thrift & Loan Ass'n* (1998) 17 Cal.4th 970, 976-977.)

Liquidated Damages in Commercial Leases

- Example: Liquidated damages provision enforceable as reasonable estimate of lost patronage and goodwill, but unenforceable penalty to extent it duplicated percentage rental payments tenant was required to continue paying. (*El Centro Mall, LLC v. Payless ShoeSource, Inc.* (2009) 174 Cal.App.4th 58, 63-65.)

Thank You



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